ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]
COURT OF ERRORS AND APPEALS OF MARYLAND.[4]
SUPREME COURT OF NORTH CAROLINA.[5]
COURT OF APPEALS OF NEW YORK.[6]

AGENCY. See *Banks and Banking; Evidence.*

AGREEMENT. See *Estoppel.*

BANKS AND BANKING.

Liability of Bank for Bonds deposited—Demand, when necessary—Duty of Bank to deliver Special Deposits—Witnesses, competency of Directors of Bank as—Agency.—When bonds are deposited with a national bank, a demand for their delivery and refusal before possession is taken of them by the federal authorities, is necessary to an action for their conversion; but, if they are wrongfully transferred by the bank or its cashier, and put with the funds of the bank and reported and treated by the bank as a part of its assets, this being a conversion, no demand and refusal will be necessary in order to maintain trover: *Bank of Monmouth* v. *Dunbar*, 118 Ill.

A national bank after its failure, and its property has passed into the hands of the federal authorities, has the right, and it is its duty under sect. 5228 of the Rev. Stats. of the United Statutes, to deliver special deposits: *Id.*

In an action by an administrator against a bank for the conversion of municipal bonds specially deposited, the bank directors, being parties in interest, are incompetent to testify generally as witnesses in behalf of the bank; and the fact that the cashier of the bank may have bought the bonds for the intestate as his agent, and testified in the case, will not authorize the directors to testify to matters happening after the termination of such agency: *Id.*

When a bank customer employs the cashier of the bank to purchase bonds for him, and after the purchase, places them on special deposit with the bank, the cashier, after such purchase and deposit, ceases to be agent for the owner of the bonds, and if he afterward transfers the bonds to the bank to conceal his own embezzlement of funds, he will be acting

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[1] From J. C. Bancroft Davis, Esq., Reporter; to appear in 119 U. S. Rep.
[2] From Hon. N. L. Freeman, Reporter; to appear in 118 Ill. Rep.
[3] To appear in 143 or 144 Mass. Rep.
[4] From J. Shaff Stockett, Esq., Reporter; to appear in 65 Md. Rep.
[5] From Hon. Theo. T. Davidson, Reporter; to appear in 95 N. C. Rep.
[6] To appear in 103 or 104 N. Y. Rep.

as the agent for the bank, and notice to him of the ownership of the bonds will be notice to the bank: *Id.*

Checks—Bills of Exchange.—The essential characteristic of a check is, that it shall be instantly payable, on demand: *Merchants' Nat. Bank* v. *Ritzinger*, 118 Ill.

An instrument in the form of a check, by a depositor upon his banker, is not a draft or bill of exchange merely because it is drawn by a party out of this state on a bank in this state, or contains the words "original," and "second unpaid." The use of these words does not make its payment conditional: *Id.*

The issue of more than one copy of a bill of exchange or check upon a bank does not, in any sense, render the instrument conditional. The whole of the set constitutes, in law, but one bill, and the payment or cancellation of either of the sets is a discharge of all: *Id.*

Collections—Application of Proceeds—Liability therefor.—If the holder of a draft instructs his banker to collect the money due on it, and hold the same until called for, and the bank, in violation of such instruction, pays the same to another by crediting it to the account of the latter, it will be liable to the person for whom it made the collection: *International Bank* v. *Ferris*, 118 Ill.

But where the collection is made for the owner under his direction, or under an instruction of a person accompanying him, given in his presence and hearing, to hold the money until one or the other of the two should give directions as to its disposition, and such other person afterward has the same paid to himself, or placed to his credit to make good his overdrawn account, the bank will not be liable to the owner for whom the collection was made: *Id.*

Depositors—Unauthorized Payment of Money of—Custom—Signature Book—Principal and Agent—Power of Attorney.—Where the drawer of a check upon one bank in favor of another, delivers the check to a person, with verbal instructions to deposit it to the drawer's credit in the bank in favor of which it is drawn, and, instead, that person deposits it there to his own credit, as trustee for the drawer, and afterwards draws the money, the bank is liable to the drawer of the check for the money so paid: *Sims* v. *U. S. Trust Co.*, 103 or 104 N. Y.

The fact that a bank makes a practice of requiring the signature of customers to accompany their deposits will not protect it from liability of the real owner for money received without taking his signature: *Id.*

A power of attorney authorizing the donee therein named to collect all moneys due, or to become due, his principal on "rents, accounts, bonds and mortgages, or otherwise," and to do all business with a particular bank named in the power, in his principal's name, which the principal could do were he present, gives the attorney no authority to draw money of his principal from another bank: *Id.*

Deposit—Payment of Wife's Money on Trustee Process against Husband.—In an action by a married woman against a savings' bank for money had and received by the defendant to the plaintiff's use, where the answer admits a deposit in the plaintiff's name, but claims that a

part was held and paid under trustee process against the plaintiff's husband, and, on the trial, the plaintiff testifies that the money was her own, and her husband, who was regarded by the bank as the principal, disclaims the fund, the court should not direct a verdict for the defendant: *Townsend* v. *Webster Five Cent Sav. Bank*, 143 or 144 Mass.

When Bank chargeable with Notice of Trust—Action—Money had and Received—Privity of Contract.—When commission men, for the purpose of transmitting their principal's money in the country, deposited the same in a city bank to the credit of the country bank for the use of their principal, with a ticket showing for whose use the deposit was made, and the city bank accepted the same and gave a certificate that the amount had been carried to the credit of the country bank for the use of the principal, it was *held*, that these facts charged the city bank with full notice of the ownership of the money and of the trust character in which it was to be transmitted to the country bank: *Drovers' Nat. Bank* v. *O'Hare*, 118 or 119 Ill.

In such case the liability assumed by the city bank was to pay to the country bank for the use of the owner the amount of the deposit, and upon such payment being made and acceptance thereof, the liability of the city bank would cease, and the country bank would become liable to the person for whose benefit the deposit was made: *Id.*

Where a party deposited money in a city bank to the credit of his country bank, for his use, this course being adopted as a means for the transmission of the funds to the depositor's place of business, and the city bank transferred the funds to another city bank, which was the correspondent of the country bank, without any notice that the country bank was a mere trustee for another, and the funds were placed to the credit of the country bank, and on its failure they were applied on its indebtedness to its correspondent bank: *Held*, that there being no privity of contract between the depositor and the second city bank, he could not maintain an action against that bank, but had his action against the first named bank: *Id.*

Right of Set-off against a Deposit—Entry in Books—Contrary to Notice of Facts—Depositor—Right to Check against Deposit.—A bank has the right of set-off as against a deposit, only where the individual, who is both depositor and debtor, stands in both these characters alike, in precisely the same relation, and on precisely the same footing toward the bank. Hence, an individual deposit cannot be set off against a partnership debt: *International Bank* v. *Jones*, 118 or 119 Ill.

Where a firm is dissolved, which is largely indebted to a bank for overdrafts upon its deposits, and the bank has notice of the dissolution, and of the fact that one of the partners continues the business in the old firm name, and such partner afterward makes a deposit, against which he issues his check, the holder of such check will be entitled to be paid out of such deposit, and in such case it is immaterial in what book or in what manner the entry of the deposit is made, if the bank, at the time of such entry, knew such deposit was made by the partner so continuing the business for himself, though in the old firm name: *Id.*

Although a partner making an individual deposit with a bank is under a legal obligation to pay a debt to the bank owing by a firm of which he was a member, he may lawfully appropriate his deposit to a

bona fide creditor by drawing a check in his favor, and thereby vest him with full power to sue for and collect the same of the bank: *Id.*

BANKRUPTCY. See *Damages.*

COMMON CARRIER.

Sleeping-Car Company—Liability for Property Stolen—Notice disclaiming Liability—Evidence—Negligence.—A sleeping-car company is bound to use reasonable care to guard a passenger on its cars from theft; and if, through want of care, the personal effects of a passenger, such as he might reasonably carry with him, are stolen, the company is liable: *Lewis* v. *Sleeping-Car Co.*, 143 or 144 Mass.

The fact that the company has posted a notice in its cars in which it disclaimed liability for the loss of valuables by passengers cannot be availed of, by way of a defence to an action by a passenger whose money, which he had placed beneath the pillow in his berth on going to sleep, was stolen, where it appears that the passenger did not see or know of such notice: *Id.*

In an action against a sleeping-car company by a passenger, for money stolen from his berth while he was asleep, the fact that another passenger lost a sum of money in a similar manner at the same time is itself some evidence of the want of proper watchfulness by the porter of the car; and where there was evidence that the porter was found asleep in the early morning, and that he was required to be on duty for thirty-six hours continuously, which included two nights, a case is presented which must be submitted to the jury to determine whether or not there was negligence on the part of the company in guarding its passengers: *Id.*

CONSTITUTIONAL LAW.

Suit in Personam, with Attachment to enforce Lien—Jurisdiction—Constitution of the United States—Surety.—The jib-boom of a vessel towed by a steam-tug, in the Chicago river, at Chicago, Ill., struck a building on land, through the negligence of the tug, and caused damage to it. A statute of Illinois gave a lien on the tug for the damage, to be enforced by a suit *in personam* against her owner, with an attachment against the tug, and a judgment *in personam* against her owner and the surety in a bond for her release. In such a suit, in a court of Illinois, to recover such damage, such a bond having been given, conditioned to pay any judgment in the suit, and the tug having been released, an application afterwards by J., claiming to be part owner of her, to be made a defendant in the suit, was denied, and a judgment for the damage was given against the defendant and the surety in the bond, without personal notice to the latter, which was affirmed by the Supreme Court of Illinois on a writ of error from this court: *Held* (1) The cause of action was not a maritime tort of which an Admiralty court of the United States would have jurisdiction; (2) the state could create the lien and enact rules to enforce it, not amounting to a regulation of commerce, or to an admiralty proceeding *in rem*, or otherwise in conflict with the Constitution of the United States; (3) The actual proceeding in this case was a suit *in personam*, with an attachment to enforce the lien, and was not forbidden by that constitution; (4) the provision of subdivision 6, of sect. 9, of art. 1, of the Constitution of the United States,

in regard to giving a preference to the parts of one state over those of another, is not a limitation on the power of a state; (5) the judgment against the surety was proper, as the statute provided for it, and formed part of the bond; (6) J. was not unlawfully denied a hearing, because he did not apply to be made a defendant until after the tug was discharged: *Johnson* v. *Chicago, &c., Elevator Co.*, 119 U. S.

Navigable Streams—Improvements—Duty of Tonnage.—The provision in the ordinance of 1787 that the navigable waters leading into the Mississippi and the St. Lawrence shall be common highways, forever free, without tax, impost, or duty therefor, refers to rivers in their natural state, and does not prevent the state of Illinois from improving the navigation of such waters within its limits, or from charging and collecting reasonable tolls from vessels using the artificial improvements, as a compensation for the use of those facilities: *Huse* v. *Glover*, 119 U. S.

A river does not change its legal character as a highway if crossings by bridges or ferries are allowed under reasonable conditions, or if dams are erected under like conditions: *Id.*

If, in the opinion of a state, its commerce will be more benefited by improving a navigable stream within its borders, than by leaving the same in its natural state, it may authorize the improvements, although increased inconvenience and expense may thereby attend the business of individuals: *Id.*

A "duty of tonnage," within the meaning of the constitution, is a charge upon a vessel, according to its tonnage, as an instrument of commerce, for entering or leaving a port, or navigating the public waters of the country: *Id.*

Contract.

Conditional Order delivered to Agent—Delivery to Principal—Consent of Signer of Order—Letter rescinding Order—Admissibility.—A written order for goods delivered to the selling agent of a manufacturer, with the understanding that the agent was to hold it for three or four days, subject to the order of the signer, and to destroy it if the latter should so decide, is not a contract, nor an offer, until delivered to the manufacturer, with the consent of the signer: *Morris* v. *Brightman*, 143 or 144 Mass.

A letter written by the signer of the order to the agent, the day after the delivery of the order, is admissible in evidence to show that the right to rescind has been exercised: *Id.*

Corporation. See *Municipal Corporation.*

Criminal Law.

Extradition—Jurisdiction of United States Court—Kidnapping.—A plea to an endorsement in a state court that the defendant has been brought from a foreign country by proceedings which are a violation of a treaty between that country and the United States, and which are forbidden by that treaty, raises a question, if the right asserted by the plea is denied, on which this court can review, by writ of error, the judgment of the state court: *Ker* v. *Illinois*, 119 U. S.

But where the prisoner has been kidnapped in the foreign country and brought by force against his will within the jurisdiction of the state

whose law he has violated, with no reference to an extradition treaty, though one existed, and no proceeding or attempt to proceed under the treaty, this court can give no relief, for these facts do not establish any right under the constitution or laws or treaties of the United States: *Id.*

The treaties of extradition to which the United States are parties do not guarantee a fugitive from the justice of one of the countries an asylum in the other. They do not give such person any greater or more sacred right of asylum than he had before. They only make a provision that for certain crimes he shall be deprived of that asylum and surrendered to justice, and they prescribe the mode in which this shall be done: *Id.*

The trespass of a kidnapper, unauthorized by either of the governments, and not professing to act under authority of either, is not a case provided for in the treaty, and the remedy is by a proceeding against him by the government whose law he violates, or by the party injured: *Id.*

How far such forcible transfer of the defendant, so as to bring him within the jurisdiction of the state where the offence was committed, may be set up against the right to try him, is the province of the state court to decide, and presents no question in which this court can review its decision: *Id.*

DAMAGES.

Bond—Liquidated Damages — Bankruptcy.—In a bond "in the penal sum of $10,000, liquidated damages," with condition that certain third persons shall within a year release the obligee from a large number of debts held by them severally, and varying from $8000 to $10 each, the sum of $10,000 is a penalty, and not liquidated damages; and in an action thereon the obligee, upon proof that none of those debts were released by the holders within the year, but that immediately afterwards he was discharged from all of them in bankruptcy, can recover nominal damages only: *Bignall* v. *Gould*, 119 U. S.

EQUITY.

Injunction—Mercantile Agency—Restraining Publication of Name.—A bill in equity, alleging that the defendants have published, and intend to publish in the future, the name and business standing of the plaintiff in the records and books of a mercantile agency, and praying for an injunction to restrain such publication, cannot be maintained: *Raymond* v. *Russell*, 143 or 144 Mass.

It is not within the jurisdiction of a court of equity to restrain, by injunction, representations as to the character and standing of the plaintiff, or as to his property, although such representations may be false, if there is no breach of trust or of contract involved: *Id.*

ESTOPPEL.

Sale of Grain stored with Elevator Company having apparent Ownership—Secret Agreement.—Where owners and dealers in wheat place it with an elevator company, and knowingly permit such company to mingle it with other wheat purchased by the company, and to sell from the common mass, thus clothing it with apparent ownership and authority to sell the wheat, they are estopped to assert title thereto, as

against an innocent purchaser for value, who bought in good faith, in the usual course of business, believing such company to be the owner of the wheat: and a private understanding between the dealers and the company, cannot affect the rights of such innocent purchaser: *Preston* v. *Witherspoon*, 143 or 144 Mass.

EVIDENCE. See *Common Carrier.*

Treacherous Witness—Practice.—If a witness has made to the party who calls him, or to the attorney of such party, a statement totally variant from his sworn testimony, and on the faith of which statement he has been called, he may be asked if he made such a statement; and if he denies it, the proof of such statement is admissible, not for the purpose of impeaching the general character of the witness, but for the protection of the party calling him: *Smith* v. *Briscoe*, 65 Md.

If the plaintiff calls a witness, relying upon statements made to him or his attorney, and when on the stand he proves the defendant's case, the principles of justice require that the plaintiff should be able to show why he called him: *Id.*

There are objections to either course, but the more objectionable would be to hold the party bound by the evidence of such treacherous witness; *Id.*

Such declarations must be restricted to those made to the party calling him, or to his attorney, and made in reference to the case pending, and must not be extended to statements made to others: *Id.*

But it is not every statement that may be made, even to the party litigant, or his attorney, that should be allowed to be contradicted by the party calling the witness. It should be left to the discretion of the court before whom the case is tried, and it should be satisfied that the party has been taken by surprise, and that the evidence is contrary to what he had just cause to expect from the witness, based on his statements, and that such statements were made about material facts in the case: *Id.*

EXECUTORS AND ADMINISTRATORS.

Power to Pay Testator's Bid at Foreclosure Sale—Acts in Good Faith, before Qualifying, subsequently Ratified.—Testator, foreclosing a mortgage on realty out of the state, bid it in at the sale for the amount of all the prior liens and costs. Before completing the transaction he died, and his executors, without waiting to be sued, but acting in good faith, under the advice of counsel, and with reasonable prudence and care, paid the amount of the bid: *Held*, that being bound to fulfil their testator's contract, they had a right to discharge the obligation voluntarily, without suit: *Denton* v. *Sanford*, 103 or 104 N. Y.

Executors paid the purchase-money and took a deed of land bid in by testator at foreclosure sale before qualifying as executors. After qualifying, they ratified these acts, which were all done in good faith: *Held*, no *devastavit*: *Id.*

Power of Sale in Will—Administrator Cum Testamento Annexo.—An administrator, *cum testamento annexo*, can execute any power conferred by the will on the executor therein named: *Council* v. *Averett*, 95 N. C.

As a general rule, where a will directs lands to be sold for division

among devisees, and no person is designated to make the sale, neither an executor, nor an administrator with the will annexed, can execute the power, but such power may be conferred upon them, either by express words, or by reasonable implication from the provisions of the will: *Id.*

Where the fund to be divided is to be raised by a sale of both real and personal property, or where the fund to be raised by the sale is to pay debts, or discharge legacies, or is to pass into the hands of the executor, to be applied by him by virtue of his office, the executor can execute the power of sale, as to the realty, although the will does not confer it on him in direct terms: *Id.*

So, where a testator gives all of his property of every description to his wife for life, and at her death, to be sold and divided among his children, it was *held*, that by necessary implication the will conferred the power of sale on the executor, and a sale, by an administrator with the will annexed, of the realty, made after the death of the life-tenant, passed a good title; *Id.*

Power of Sale—Effect of Death of one of several Beneficiaries on.—Where power is given in a will, to several executors, to sell real estate, a sale by the executor who qualifies, or by the surviving executor, will be valid, whether the power is merely discretionary, or is mandatory: *Ely* v. *Dix*, 118 Ill.

It has been held, that when the object for which a power has been created has been accomplished, or has become impossible, or unattainable, the power itself will cease to exist. But where power is given to executors to sell real estate for the purpose of creating a fund, in which several persons are to participate, the death of one of the beneficiaries, before there has been any attempt to exercise the power, will not in anywise operate to impair the authority of the executors to sell for the benefit of the survivors. In such case, the object of the testator in making provision for the fund, has not been wholly accomplished, nor has it become entirely impossible or unattainable,—and so the power will not have ceased to exist: *Id.*

INJUNCTION. See *Equity.*

HUSBAND AND WIFE. See *Mortgage.*

JURISDICTION. See *Constitutional Law.*

Of Circuit Court of the United States—Must appear on Face of Record.—If the jurisdiction of the Circuit Court of the United States does not appear on the face of the record, in some form, the decree is erroneous, and must be reversed: *Peper* v. *Fordyce*, 119 U. S.

A., a citizen of Arkansas, conveyed to B., a citizen of the same state, real estate in Arkansas, in trust to secure the payment of notes due to C., a citizen of Missouri, with power of sale in case of non-payment. Subsequently, A. became insolvent, and assigned his property to D., a citizen of Arkansas, in trust for the benefit of creditors: *Held*, that, in proceedings in equity commenced by D. to determine the amount of indebtedness from A. to C., and to prevent the sale of the trust property by B., and to obtain a cancellation of the conveyance to B. on payment of the amount found due to C, B. was a necessary party, with interests adverse to D.; and as both were citizens of the same state, and as the

jurisdiction of the Circuit Court depended alone upon the citizenship of the parties, it was without jurisdiction: *Id.*

Malicious Prosecution.

Evading Payment of Railroad Fare—Probable Cause—Railroad Police Officer—Authority to order Arrest.—The plaintiff was a passenger on a train of the defendant's road, running from L. to S., and offered to the conductor a ticket marked from L. to S. "and return," on which he had ridden from L. to S. The conductor refused the ticket, and demanded fare. According to the testimony of the conductor, the plaintiff said he would get nothing but the ticket, and refused to leave the train. According to the testimony of the plaintiff, he said he had no money, because he supposed the ticket was good, but would pay when he arrived at S., and offered the ticket as security, but it was refused. The evidence showed that the conductor allowed him to ride to S., when he had him arrested, and made a complaint against him for fraudulently evading the payment of his fare. After trial, the plaintiff was acquitted. On these facts, *held*, that there was evidence of want of probable cause to support a verdict for the plaintiff: *Krulevitz* v. *Eastern Rd.*, 143 or 144 Mass.

On the arrival of the train at S., officers (having been notified) were ready, and entered the car, when the conductor, who was a railroad police officer, pointing to the plaintiff, said: "That is the man," and told them to take him to the lock-up, which was done. *Held*, that the jury might return a verdict for the plaintiff in a count for assault and false imprisonment, on the ground that the conductor ordered the arrest, not as a police officer, but as a conductor; so that, being made by the local officers, who were not present when the offence was committed, without a warrant, it was not authorized by the statute: *Id.*

Mortgage.

Foreclosure—Sale—Husband and Wife—Right to Proceeds.—Where A. and B., his wife, were each seised in fee of one undivided half of certain premises, and A. gave to C. a mortgage of the premises to secure the payment of money advanced for improvements on the same, with a covenant that he was seised in fee of the whole estate, B. joining to release dower, and all parties intending to mortgage the whole estate, and, when the facts were discovered, B. gave to C. a quit-claim deed of her half interest, taking from C. an instrument of defeasance which provided that, in case of sale, if half the proceeds was sufficient to pay A.'s indebtedness to C., half the proceeds should be paid to B., and if half was not sufficient, B. should receive the balance, B. is entitled, in case of sale, to the share of the proceeds provided by the contract, and her rights are not affected by a sheriff's sale of all the right in equity which A. had in the mortgaged premises, although her contract of defeasance was not recorded: *Union Sav. Bank* v. *Pool*, 143 or 144 Mass.

Municipal Corporation.

Power to Grade and Sod Centre of Streets—Assessments.—Where a city by special charter is invested with the exclusive control of its streets, with power to regulate and improve the same, the nature and

manner in which they may be improved must in a large measure be left to the discretion of its authorities, and they may rightfully cause a street to be graded, and when its entire width is not needed for travel, they may cause a strip in the centre thereof to be sodded, instead of gravelling the entire street, and raise the cost thereof by special assessment upon the property benefited thereby: *Murphy* v. *City of Peoria*, 118 or 119 Ill.

Power to Provide for Water Works—To require Lateral Water Pipes—Special Assessment, when Unreasonable and an Abuse of Power. —Incorporated cities and towns have power to establish water works within their limits for the convenience, comfort and welfare of the public, and the corporate authorities have a large discretion in the execution of this power, with which the courts cannot interfere, except in case of a clear abuse: *Warren* v. *City of Chicago*, 118 or 119 Ill.

In the absence of any statute on the subject, it is for the corporate authorities to say through what streets the main supply pipes shall be laid down, so as to bring the water within the reach of consumers. It is also for them to determine the exact line and locality of the main supply pipe, in each street or avenue: *Id.*

In the exercise of this discretion, were it not for the inconvenience and expense of tearing up the pavement or sidewalk in making repairs, the corporate authorities would be justified in requiring the main pipe to be laid along and up to the line dividing the street from the abutting lots, with the necessary fixtures for the attachment of private pipes opposite each lot; and the expense of this might be raised in whole or in part by special assessment upon the abutting property: *Id.*

So, when there is a demand for an extension of the main water pipe in a street, and the plan adopted requires it to be laid in the centre line of the street, such authorities may require the water to be conducted to the edge of each lot by means of lateral or service pipes, with suitable fixtures for the attachment of private pipes by the owners of such lots: *Id.*

When city authorities have once established the line of its main water pipes, and laid the same, whereby the water is brought within a reasonable distance of the abutting lots, and as near to them as is usual, it is at least doubtful whether they can, either at the public expense or the cost of lot owners, provide by ordinance for the construction of lateral or service pipes as an original and independent improvement for the purpose of connecting the abutting lots with the main pipe in the street: *Id.*

It would seem that when the water is brought in the usual way into the main pipe in front of the lots, so that the connecting of the lots with it is all that remains, the corporate authorities have discharged their duty to the public. The laying of lateral pipes, connecting the main pipe with the lots, is a matter of private concern, and to require such pipes to be laid by lot owners at their own expense, when not needed, is an unauthorized invasion of private rights: *Id.*

After a city had laid its main supply water pipes along a street, it provided by ordinance for the laying of lateral or service pipes, to be paid by special assessment on the abutting lots, under which certain unimproved lots were arbitrarily divided, and each half assessed for one pipe, when none were then needed, and one would be as many as might be

required when the property was improved: *Held*, that if the city had the power to make any assessment for such proposed improvement, the one made should not be enforced as being unreasonable and oppressive, and for an abuse of power: *Id.*

NEGLIGENCE. See *Common Carrier.*

PARTNERSHIP.

Advances under Agreement to become Partner.—Where A. advances money to B., to be used in his business, taking his notes therefor, under an agreement that A. might become an equal partner with B., considering the sums advanced as contributions to the capital of the firm, if, on further examination, A. should so desire, and B. carries on the business as his own, drawing more than half the profits therefrom, and crediting A. on the books with interest on the notes, and A., seeing the interest credited, claims that he is a partner, and should receive half the profits, but no interest, and B. still continues to credit A. with interest, and to treat the business as entirely his own, in a suit on the notes, the court is justified in ruling that no partnership was ever formed: *Morrill* v. *Spurr*, 143 or 144 Mass.

POWER OF ATTORNEY. See *Banks and Banking.*

PRACTICE. See *Evidence.*

PRINCIPAL AND AGENT. See *Banks and Banking.*

RAILROADS. See *Malicious Prosecution.*

SCHOOL LAW.

Lease of Basement of Church for School Purposes—Employment of Teachers who are Catholics in Faith—Religious Exercises—Schools not to be Sectarian—When School House may be Leased.—When it becomes necessary for a board of education to procure a building in which to keep a public school, they are authorized by law to lease a suitable building for that purpose, and it matters not that such building had been used for a church by some religious body: *Millard* v. *Board of Education*, 118 or 119 Ill.

The statute has not prescribed any religious belief as a qualification of a teacher in the public schools, and therefore the school authorities may select a teacher who belongs to any church or to no church, as they may think best: *Id.*

A bill to enjoin a board of education from the use of school funds for sectarian purposes, alleged that the children of Catholic parents and the teachers, who were Catholics, were required to attend at a Catholic church, the basement of which was used for the school, at eight o'clock in the morning of school days, and hear mass read by the priest, and then repair to the school room and engage in the study of the church catechism for half an hour before the opening of the school, and at the close of the school at noon, the "Angelus" prayer was read by the teachers and pupils, but failed to show that the board were in any manner connected with such exercises and requirements: *Held*, that the bill did not show any ground of equitable relief, it not being shown

that complainant had any children who were required, against his wishes, to attend or receive any religious instruction: *Id.*

The free schools of this state are not established to aid any sectarian denomination, or assist in disseminating any sectarian doctrine, and no board of education or school directors have any authority to use the public funds for such a purpose: *Id.*

When a proposition to raise money to build a school house, at a site selected, is defeated by a vote of the people, the board of education or directors, being required to keep school for at least six months in each year, may lawfully rent any suitable building or room in which such school may be kept, without any vote for that purpose: *Id.*

SURETY. See *Constitutional Law.*

TAXATION.

Property in Transit from one State to another—Temporary Detention—Situs of Property for Purposes of Taxation.—Property in course of transportation from one state to another, over one of our navigable rivers, or over any of the public highways of the country, is not liable to taxation as it passes over such highways, by the state authorities along the lines thereof; nor, it would seem, if property, while in the course of transportation over one of our navigable rivers, should be detained by low water, or ice, or other cause, would it be liable to be taxed by the authorities where the detention occurred: *Burlington Lumber Co.* v. *Willetts*, 118 Ill.

A lumber company located at Burlington, Iowa, left a large quantity of saw logs in a harbor or bayou on the Illinois side of the Mississippi river for safe keeping, until needed, and had leased the land along the shore and employed an agent in this state to take care of them, and it appeared that the company had kept logs at such place for several years before, and that they were kept at such place because they could be kept there in greater safety, and at a less expense than at Burlington. *Held*, that such logs were subject to taxation in this state. The property had a *situs* here, rendering it subject to taxation under state authority. The owners might be deemed to be engaged in business in this state, so far as the storage of the property was concerned: *Id.*

But an incorporated village has no authority of law to impose a corporate tax upon property thus situated, and which is without its limits, and being void, if levied, its collection may be enjoined: *Id.*

TRUST. See *Will.*

USAGE. See *Evidence.*

WATERS AND WATER-COURSES. See *Constitutional Law.*

Diverting Flow of Waters to Injury of Lower Proprietors—Strangers contributing to Injury—Liability.—Where a railway company diverts the flow of surface water from its natural channel, and conducts it through a ditch it has made along its right of way, and empties it into a slough at a point where it overflows the land of another, the company may be liable for such damages as result from its own acts, but it will not be liable on account of any water that may be brought into such rail-

road ditch by artificial drains of other parties, made without the sanction or approval of the company: *Chicago and Alton Rd.* v. *Glenney*, 118 Ill.

Privilege of Locating Oyster Beds—License—Power of State over—Right of Property in Oysters.—A non-resident of the state, whether he be sole or part owner of land in the state, is incapacitated from holding a lot for the planting of oysters: *Hess* v. *Muir*, 65 Md.

The privilege of locating oyster lots has no elements of a grant by patent, but is simply a license, revocable at the pleasure of the legislature; it is merely a personal privilege to the recipient, neither inheritable nor assignable: *Id.*

The oysters deposited by the holder of a license during its continuance, remain his personal property, with the right of selling or otherwise disposing of them; but the territory continues subject to the control of the state: *Id.*

WILL. See *Executors and Administrators.*

Construction of Legacy.—A bequest of a pecuniary legacy "out of the estate," or "to be paid," or "to be raised out of my estate," is a charge first upon the personal, and after its exhaustion, upon the real estate of the testator, unless it can be seen from the context, or other parts of the will, that these terms were used in a more restricted sense, and including only the personal estate: *Worth* v. *Worth*, 95 N. C.

The testator having in the first clause of his will, given a pecuniary legacy to his wife to be paid to her in cash or bonds at her option out "of my estate," and in subsequent clauses made specific devises of the greater part of his "*real* estate," but in disposing of his personal property used the terms "my estate." *Held*, that the real estate specifically devised was not chargeable with the payment of the pecuniary legacy to the wife: *Id.*

Trust—Precatory Words—Indefiniteness.—A will, after giving a large number of pecuniary legacies to the testator's relatives and next of kin, gave the sum of $10 to the Rev. H. G. Bowers; and immediately after this last legacy there was the following clause: "I give, bequeath and devise unto the Rev. H. G. Bowers, of Jefferson, Maryland, all the rest and residue of my estate, and desire him to use and appropriate the same for such religious and charitable purposes and objects, and in such sums and in such manner as will in his judgment best promote the cause of Christ:" *Held*, (1) that the language used was just as effective, so far as the testator's intention was concerned, to create a trust, as if the proper technical term, "in trust," had been employed. (2) That such a trust was void, being too vague and indefinite to be carried into effect; and the property went to the heirs-at-law and next of kin of the testator: *Maught* v. *Getzendanner*, 65 Md.

WITNESS. See *Banks and Banking—Evidence.*